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11

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14
15 PETER LIK, an individual, and PETER LIK
IP COMPANY, LLC, a Nevada limited
liability company,

16
17 Plaintiffs,

18 v.

19 RICHARD MARCHITTO, an individual,
RICHARD MARC GALLERY LLC, a
20 Nevada limited liability company, and DOES
1-10, inclusive.

21 Defendants.
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CASE NO. 2:16-cv-02200-RFB-NJK

**STIPULATED PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
MATERIALS**

Complaint Filed: September 16, 2016
Trial Date: TBD

AS AMENDED

1 Plaintiffs Peter Lik and Peter Lik IP Company, LLC and defendants Richard Marchitto
2 and Richard Marc Gallery LLC stipulate as follows:

3 **PURPOSES AND LIMITATIONS**

4 Disclosure and discovery activity in this action may involve production of certain
5 confidential, proprietary, private or trade secret information for which special protection from
6 disclosure would be warranted. Accordingly, the parties hereby stipulate to and petition the
7 Court to enter the following Stipulated Protective Order Governing Confidential Materials
8 (“Order”). The parties acknowledge that this Order does not confer blanket protections on all
9 disclosures or responses to discovery and that the protection it affords extends only to the limited
10 information or items that are entitled to treatment as confidential under applicable state or federal
11 law. The parties further acknowledge that this Order creates no entitlement to file confidential
12 information under seal; the parties shall follow the applicable rules when seeking permission
13 from the Court to file material under seal.

14 Notwithstanding anything in this Order, the parties agree that Disclosure or Discovery
15 Material, as defined in Section I.B below, shall not be used by the Receiving Party, as defined in
16 Section I.C below, for any purpose other than for prosecuting or defending this action, unless
17 otherwise agreed to by the parties.

18 **I. DEFINITIONS**

19 **A. Party or Parties:** any party to this action, and all parties to this action, including
20 all of its or their officers, directors, owners, members, partners, trustees, beneficiaries,
21 employees, consultants, retained experts, attorneys, and outside counsel (and their support staff).

22 **B. Disclosure or Discovery Material:** all items or information, regardless of the
23 medium or manner generated, stored, or maintained (including, among other things, testimony,
24 transcripts, or tangible things) that are voluntarily exchanged, produced or generated by any
25 Party or non-party in disclosures or responses to discovery in this matter.

26 **C. Receiving Party:** a Party that receives Disclosure or Discovery Material from a
27 Producing Party.
28

1 **D. Producing Party:** a Party or non-party that produces Disclosure or Discovery
2 Material in this action.

3 **E. Designating Party:** a Party or non-party that designates information or items that
4 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
5 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as those terms are defined below.

6 **F. “CONFIDENTIAL” Information or Items:** information (regardless of how
7 generated, stored, or maintained) or tangible things that a Designating Party believes in good
8 faith is confidential under applicable state or federal law. “CONFIDENTIAL” Information or
9 Items generally include materials used by the Designating Party in or pertaining to its business,
10 which matter is not generally known and which the Designating Party would not normally reveal
11 to third parties or would cause third parties to maintain in confidence.

12 **G. “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information or Items:**
13 information (regardless of how generated, stored or maintained) or tangible things that a
14 Designating Party believes in good faith contains highly sensitive information that, if disclosed
15 to a competitor, would or may cause competitive harm, including but not limited to any (a) trade
16 secrets, as that term is defined in Nev. Rev. Stat. § 600A.030, (b) confidential or competitively
17 sensitive research, development, financial or commercial information, or (c) highly sensitive
18 personal information (such as credit information and/or social security numbers).

19 **H. Protected Material:** any Disclosure or Discovery Material that is designated as
20 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

21 **I. Outside Counsel:** attorneys not employed by the parties who are retained to
22 represent or advise a Party in this action.

23 **J. Expert:** a person with specialized knowledge or experience in a matter pertinent
24 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
25 a consultant in this action.

26 **K. Professional Vendors:** persons or entities that provide litigation support services
27 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
28 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

1 **II. SCOPE**

2 The protections conferred by this Order cover not only Protected Material, but also any
3 information copied or extracted therefrom, as well as all copies, excerpts, summaries, or
4 compilations thereof, plus testimony, conversations, or presentations by Parties or counsel in any
5 settings that the Designating Party believes in good faith might reveal Protected Material. All
6 notes, memoranda, reports, and other written communications that reveal or discuss information
7 contained in Protected Materials shall be given the same protections under this Order as though
8 they were designated as Protected Material.

9 This Order shall not apply to testimony or presentations at Court hearings or other Court
10 proceedings. The Parties shall take up matters of confidentiality with the Court or judicial
11 officer conducting such proceeding at the appropriate time in an effort to protect the material that
12 is the subject of this Order, subject to such Court or judicial officer's determination regarding
13 how to treat such material at such proceeding.

14 **III. DURATION**

15 Even after the termination of this litigation—whether by settlement, discontinuance,
16 dismissal, severance, judgment or other disposition—the confidentiality obligations imposed by
17 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
18 order otherwise directs.

19 **IV. DESIGNATING PROTECTED MATERIALS**

20 **A. Manner and Timing of Designations.** Except as otherwise provided in this
21 Order, or as otherwise stipulated or ordered, material that qualifies for protection under this
22 Order must be clearly so designated before the material is disclosed or produced. Designation in
23 conformity with this Order requires the following:

24 1. For information in documentary form (apart from transcripts of
25 depositions or other pretrial or trial proceedings): the Producing Party must affix the legend
26 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top or bottom
27 of each page that contains Protected Material, including on each page of any electronically
28 produced document.

1 A Party or non-party that makes original documents or materials available for inspection
 2 need not designate them for protection until after the inspecting Party has indicated which
 3 material it would like copied and produced. During the inspection and before the designation, all
 4 of the material made available for inspection shall be deemed “CONFIDENTIAL –
 5 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 6 copied and produced, the Producing Party must determine which documents, or portions thereof,
 7 qualify for protection under this Order, and before producing the specified documents, the
 8 Producing Party must affix the appropriate legend at the top or bottom of each page that contains
 9 Protected Material.

10 2. For testimony given in deposition: all transcripts will automatically be
 11 designated “CONFIDENTIAL” from the day of the deposition or proceeding to fourteen (14)
 12 calendar days after receipt by the witness or the witness’s attorney of notice that the transcript is
 13 ready for review. During this period of automatic designation, the Designating Party may
 14 provide written designations of those portions of the testimony that qualify for protection under
 15 this Order. If such written designations are submitted, then the transcript will be revised to
 16 reflect those designations. After the expiration of this period of automatic designation, if no
 17 written designations are submitted by the Designating Party, then the entire transcript will be
 18 deemed non-Protected Material, and the transcript will be revised to remove all confidentiality
 19 designations.

20 3. For information produced in some form other than documentary, and for
 21 any other tangible items: the Producing Party must affix the legend “CONFIDENTIAL” or
 22 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in a prominent place on the exterior of the
 23 container or containers in which the information or item is stored, or in some other reasonable
 24 fashion depending on the form of the material. If that matter is stored or recorded electronically
 25 (including information databases, images, or programs stored on computers, discs, networks or
 26 backup tapes) and a legend cannot be affixed on it, the Designating Party may designate such
 27 material as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by
 28 cover letter identifying the Protected Material. Parties other than the Producing Party shall also

1 have the right to designate such materials for confidential treatment in accordance with this
2 Order by written notice. If only portions of the information or item warrant protection, the
3 Designating Party, to the extent practicable, shall designate the protected portions only.

4 **B. Inadvertent Failures to Designate.** If corrected, an inadvertent failure to
5 designate qualified information or items as Protected Material does not, standing alone, waive
6 the Designating Party's right to secure protection under this Order for such material. If material
7 is appropriately designated after the material was initially produced, the Receiving Party, on
8 timely notification of the designation, must make reasonable efforts to assure that the material is
9 treated in accordance with the provisions of this Order. As used in this Order, an act is "timely"
10 if it does not unduly prejudice another Party.

11 **C. Production of Privileged or Otherwise Protected Material.** Pursuant to
12 Federal Rule of Evidence 502(d), if in connection with this litigation documents or information
13 subject to a claim of attorney-client privilege, work product protection and/or any other privilege
14 or protection from disclosure are disclosed ("Disclosed Information") by the Producing Party,
15 the disclosure of such Disclosed Information shall not constitute or be deemed a waiver of any
16 claim of attorney-client privilege, work product protection or any other privilege or protection
17 that the Disclosing Party would otherwise be entitled to assert with respect to the Disclosed
18 Information and its subject matter.

19 The Producing Party shall promptly notify the Receiving Party of any claim of disclosure
20 with respect to Disclosed Information upon discovering the inadvertent disclosure. Promptly
21 upon notification, and in no event later than five (5) business days after receiving notice, the
22 Receiving Party shall return and/or destroy all copies of the Disclosed Information identified in
23 the notice, and shall certify in writing that it has done so. In so doing, the Receiving Party shall
24 not waive or prejudice any challenge it may have to the alleged privileged status of the Disclosed
25 Information. Where recovery and return/destruction of Disclosed Information results in material
26 costs, the Receiving Party may apply to the Court to seek recovery of said costs. If, after
27 undertaking an appropriate meet-and-confer process, the parties are unable to resolve any dispute
28 they have concerning the Disclosed Information, the Receiving Party may file the appropriate

1 motion or application as provided by the Court's procedures to compel production of such
2 material.

3 Nothing in this section or in this Order waives or limits the protections afforded to the
4 parties by the applicable Federal Rules of Civil Procedure.

5 **V. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 **A. Meet and Confer.** A Party that elects to initiate a challenge to a Designating
7 Party's confidentiality designation (the "Challenging Party") must do so in good faith and must
8 begin the process by requesting in writing a conference directly (in voice to voice dialogue; other
9 forms of communication are not sufficient to satisfy the requirement of a "conference") with
10 counsel for the Designating Party. Counsel for the Designating Party shall be available to
11 participate in the requested conference within five (5) business days (excluding legal holidays) of
12 receipt of the written request, subject to an additional two (2) business day extension to meet and
13 confer under exigent circumstances, provided that the party requesting the extension explains
14 with specificity the nature of the exigent circumstances. In conferring, the Challenging Party
15 must explain the basis for its belief that the confidentiality designation was not proper and must
16 give the Designating Party an opportunity to review the designated material, to reconsider the
17 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
18 designation. A Party may proceed to the next stage of the challenge process only after it has
19 engaged in this meet and confer process.

20 **B. Judicial Intervention.** If the Parties are unable to resolve a dispute regarding a
21 challenge to a confidentiality designation pursuant to Paragraph V.A above, they will submit a
22 motion to the Court in compliance with the requirements of **Local Rule 26-7** ~~Local Rule 26-1~~. Prior to making
23 such submission, the parties must comply with Local Rule IA 1-3(f), to the extent not satisfied
24 by the parties' meet-and-confer process under Paragraph V.A above.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating
26 Party. Until the Court rules on the challenge, all parties shall continue to afford the material in
27 question the protection to which it is entitled under the Producing Party's designation.
28

1 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 **A. Basic Principles.** A Receiving Party may use Protected Material that is disclosed
3 or produced by another Party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
5 to the categories of persons and under the conditions described in this Order. When the litigation
6 has been terminated, a Receiving Party must comply with the provisions of Section IX below.
7 Protected Material must be stored and maintained by a Receiving Party at a location and in a
8 secure manner that reasonably ensures that access is limited to the persons authorized under this
9 Order.

10 **B. Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
11 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
12 disclose any information or item designated “CONFIDENTIAL” only to:

13 1. The Receiving Party’s in-house counsel and Outside Counsel in this
14 action, as well as employees and consultants of said counsel to whom it is reasonably necessary
15 to disclose the information for this litigation;

16 2. The Receiving Party, if that party is an individual, or if the Receiving
17 Party is an entity, then its officers, directors, owners, members, partners, trustees, beneficiaries,
18 and employees of the Receiving Party to whom disclosure is reasonably necessary for this
19 litigation;

20 3. Experts (as defined in Section I.J above) of the Receiving Party, and their
21 administrative support staff if any, to whom disclosure is reasonably necessary for this litigation
22 and who have signed the “Acknowledgement and Agreement to Be Bound by Protective Order”
23 (Exhibit A);

24 4. The Court and its personnel;

25 5. Neutral evaluators, mediators or arbitrators assigned to the case by the
26 Court or retained for the case by the mutual agreement of the Parties;

27 6. Professional Vendors for services such as copying, scanning, or electronic
28 document processing to whom disclosure is reasonably necessary for this litigation;

1 7. Court reporters and their staff to whom disclosure is reasonably necessary
2 for this litigation;

3 8. During their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
5 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court;

6 9. Any author or recipient of the document or the original source of the
7 information disclosed in the document; and

8 10. The Receiving Party's insurance carrier(s) and their counsel to the extent
9 reasonably related to any actual or potential coverage in connection with this litigation.

10 **C. Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

11 **Information or Items.** Unless otherwise ordered by the Court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item designated
13 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to those persons in Section VI(B)(1),
14 (3)-(10) above.

15 **D. Maintenance of Signed Agreements.** Counsel for the Receiving Party wishing
16 to disclose Protected Materials shall maintain the original signed "Acknowledgement and
17 Agreement(s) to Be Bound by Protective Order."

18 **E. Disclosure Not Otherwise Authorized.** In the event that counsel representing
19 any Party in this action believes that it is necessary to disclose Protected Materials to an
20 individual or entity to whom disclosure is not permitted by this Order, such counsel shall make a
21 written request (delivered by hand, email or fax) to counsel for the Designating Party identifying
22 the individual to whom it is desired to make such disclosure and the specific Protected Materials
23 involved, and notifying the Designating Party that they have ten (10) business days to object to
24 such disclosure. Within ten (10) business days of the request, counsel for the Designating Party
25 may object to such disclosure by delivering by hand, email, or fax a written objection to counsel
26 serving the disclosure request. Failure to so object constitutes consent to such disclosure.

27 In the event that a Designating Party objects to such disclosure, such Protected Materials
28 shall not be disclosed to any individual other than those to whom disclosure is permitted by this

Order until such dispute has been resolved by agreement of the Parties or, after the Parties engage in a good faith meet and confer about this issue, by order of the Court. However, the Parties agree to act in good faith to approve reasonable requests, if feasible, to use Protected Material at depositions taken in this action, but acknowledge that requests of this nature should generally be made using the procedure in this section prior to the deposition if reasonably anticipated.

F. Authorized Disclosures. Nothing in this Order shall preclude any Party or their attorneys from:

1. Showing materials designated as Protected Material to an individual who either prepared or reviewed the document prior to the filing of this action, or is shown by the document to have received the document.
2. Disclosing or using, in any manner or for any purpose, any information, documents, or things from the Party's own files.
3. Disclosing or using, in any manner or for any purpose, any information, documents, or things obtained from a source other than discovery.
4. Disclosing or using, in any manner or for any purpose, any information, document, or thing that is at the time of production or disclosure, or subsequently becomes, through no wrongful act or failure to act on the part of the Receiving Party, generally available to the relevant public through publication or otherwise, or is already rightfully in the possession of the Receiving Party at the time of production.

VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as Protected Material, to the extent not violative of any statute, rule, or order applicable to such party in such litigation, the Receiving Party must so notify the Designating Party, in writing (by hand, email or fax), promptly and in no event more than five (5) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

1 The Receiving Party also must immediately inform in writing the party who caused the
 2 subpoena or order to issue in the other litigation that some or all of the material covered by the
 3 subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a
 4 copy of this Order promptly to the party in the other action that caused the subpoena or order to
 5 issue.

6 The purpose of imposing these duties is to alert the interested parties to the existence of
 7 this Order and to afford the Designating Party an opportunity to try to protect its confidentiality
 8 interests in the court from which the subpoena or order issued. The Designating Party shall bear
 9 the burdens and the expenses of seeking protection in that court of its confidential material to the
 10 extent permissible by such court. Nothing in this Order is intended or should be construed as
 11 authorizing a party to disobey a lawful subpoena issued in another action.

12 **VII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 14 Material to any person or in any circumstance not authorized under this Order, the Receiving
 15 Party must immediately (a) notify in writing the Designating Party of the unauthorized
 16 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
 17 person or persons to whom unauthorized disclosures were made of all the terms of this Order,
 18 and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
 19 Bound" that is attached as Exhibit A.

20 **VIII. FILING PROTECTED MATERIAL**

21 In accordance with Local Rule IA 10-5, if any papers to be filed with the Court contain
 22 information and/or documents that have been designated as Protected Material, the proposed

See order issued concurrently and by an application to file the papers or the portion thereof containing
 herewith

or documents (if such portion is segregable) under seal; and the
 25 application shall be directed to the judge to whom the papers are directed. For motions, the
 26 parties shall publicly file a redacted version of the motion and supporting papers.

27 **IX. FINAL DISPOSITION**

28 Unless otherwise ordered or agreed in writing by the Producing Party, within ninety (90)

1 days after the final termination of this action (e.g., a Court order terminating this action and from
 2 which no appeal is taken), each Receiving Party must make reasonable efforts to return or
 3 destroy the Protected Material. As used in this paragraph, "Protected Material" includes all
 4 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
 5 the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving
 6 Party must submit a written certification to the Producing Party (and, if not the same person or
 7 entity, to the Designating Party) by the 90-day deadline that affirms that the Receiving Party has
 8 taken reasonable efforts to comply with the foregoing provisions, and has not retained any
 9 copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the
 10 Protected Material. "Reasonable efforts" shall not require the return or destruction of Protected
 11 Material that (i) is stored on backup storage media made in accordance with regular data backup
 12 procedures for disaster recovery purposes, (ii) is located in the email archive system or archived
 13 electronic files of departed employees, or (iii) is subject to legal hold obligations. Backup
 14 storage media will not be restored for purposes of returning or certifying destruction of Protected
 15 Material, but such retained information shall continue to be treated in accordance with the Order.

16 Notwithstanding this provision, counsel are entitled to retain archival copies and are not
 17 required to return or destroy copies of all pleadings, motion papers, written discovery,
 18 transcripts, legal memoranda, correspondence, attorney-client communications or attorney work
 19 product, even if such materials contain Protected Material, provided that such counsel take
 20 appropriate steps to prevent the disclosure in a manner contrary to this Order of such Protected
 21 Material. Any such archival copies that contain or constitute Protected Material remain subject
 22 to this Order as set forth in Section III above.

23 **X. MISCELLANEOUS**

24 **A. Right to Further Relief.** Nothing in this Order abridges the right of any person
 25 to seek its modification by the Court in the future.

26 **B. Admissions and Waivers.** Neither the entry of this Order, nor the designation of
 27 any information or documents as Protected Material, or failure to make such a designation, shall
 28 constitute evidence or any admission with respect to any issue in the case, and shall not

1 constitute a waiver of any objections to the disclosure of such information. Nothing in this Order
2 shall be construed as waiving any objections of either Party as to the admissibility of a particular
3 document into evidence. Moreover, nothing in this Order shall be construed to require any Party
4 to disclose to any other Party any Protected Material, or to prohibit any Party from refusing to
5 disclose Protected Material to any other party.

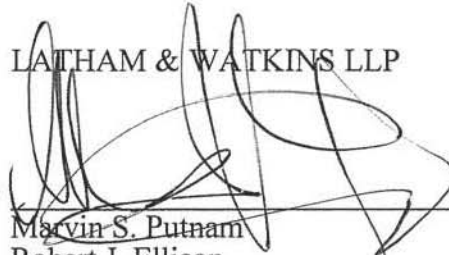
6 **C. Right to Assert Other Objections.** By stipulating to the entry of this Order, no
7 Party waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Order.

9
10 **IT IS SO STIPULATED.**

11
12 Dated: December 6, 2016

LATHAM & WATKINS LLP

13
14 By


Marvin S. Putnam
Robert J. Ellison
Attorneys for plaintiffs Peter Lik and
Peter Lik IP Company, LLC

15
16
17 Dated: December 6, 2016

RANDEZZA LEGAL GROUP

18
19 By /s/ Ronald D. Green

Ronald D. Green
Attorneys for defendants Richard Marchitto
and Richard Marc Gallery LLC

20
21
22 **IT IS SO ORDERED.**

23
24 
UNITED STATES MAGISTRATE JUDGE

25 DATED: December 7, 2016
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27
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EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, [NAME], with an address of [ADDRESS], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the District of Nevada on _____, 2016, in the case of *Peter Lik and Peter Lik IP Company, LLC v. Richard Marchitto and Richard Marc Gallery LLC*, Case No. 2:16-cv-02200-RFB-NJK.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt of court. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint [NAME] of [FIRM NAME AND ADDRESS] as my Nevada agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Executed on _____, 20____, at [CITY AND STATE].

Signature: _____